implementation of intraLATA dialing parity remained unresolved, such as the potential economic impact upon GTE and Michigan Bell, the potential impact upon the quality and level of toll services throughout the state and the cost and feasibility of necessary technology.

MCI moved for reopening, rehearing and reconsideration of the PSC's February 23, 1993 order. Among other things, MCI noted that Michigan Bell's parent company, Ameritech, had recently sought federal court approval of a plan which would allow its telephone operating companies, such as Michigan Bell, to begin competing in the interLATA long distance market. Specifically, Ameritech had filed a petition before the FCC for a modified regulatory model called "Customer First: American Universal Access Plan," (CFP), which essentially proposed opening Ameritech's local exchanges to competition with +1 dialing in return for removal of its interLATA restrictions. MCI also noted a recent order of the Minnesota Public Utilities Commission (MPUC) reaffirming its previous finding that +1 dialing was in the public interest in Minnesota. MCI's motion was supported by AT&T and the PSC staff, but opposed by Michigan Bell, GTE, and MECA.

In an order issued May 21, 1993, the PSC denied that part of MCI's motion which requested rehearing and reconsideration of the dismissal of its complaint, but granted the motion in part by remanding the case to the ALJ for the purpose of receiving further testimony and argument on the effect of Ameritech's CFP proposal, as well as the recent decision of the MPUC, on the implementation of intraLATA dialing parity in Michigan. The PSC explained its reasons for reopening the record as follows:

> The Commission finds that the filing of Ameritech's petition with the FCC and the MPUC's order require the reopening of this proceeding. The Commission deferred implementation of intraLATA dialing parity to a later date based, in part, on the fact that Michigan Bell and GTE are precluded from participating in the interLATA toll market. As a result, they may be at a significant disadvantage because they may experience a significant loss in toll revenue if intraLATA dialing parity is implemented. In addition, MCI and the Staff maintained that the two-PIC technology is available today, while Michigan Bell insisted that it will not be available for all switches until 1996, and it would then take three years to complete network deployment. Based on this conflicting evidence, the Commission found that the time frames, costs, and availability of the technology for intraLATA dialing parity require further examination.
>
> The filing of Ameritech's petition with the FCC now calls into question the underlying facts upon which the Commission based its decision to defer the issue of intraLATA dialing parity to a later date. As MCI correctly points out, Ameritech is now formally seeking expedited authority to participate in the interLATA toll market. This request casts doubt on Michigan Bell's representations in this case that it will not be able to fully deploy the two-PIC technology until 1999. Furthermore, the granting of Ameritech's petition may result in Ameritech being able to provide interLATA toll service, while MCI and other IXCs would not have intraLATA dialing parity for six months to two years thereafter. Such a result would be inconsistent with the Commission's view that competition is most effective when the participants can compete fully and fairly on a level playing field.
>
> Based on the foregoing discussion, the Commission agrees with the Staff that further study of these issues now will provide the Commission with the information needed to implement intraLATA dialing parity if and when Ameritech receives FCC and court approval. Accordingly, the Commission finds that this proceeding should be reopened to analyze the effect of Ameritech's petition, as well as the MPUC's March 9,

1993 order, on the decision to implement intraLATA dialing parity in Michigan. An analysis of this information is appropriate so that the Commission may reevaluate its determinations based on a full and complete record. Finally, although GTE will not be affected by Ameritech's petition, the Commission agrees with the Staff that this proceeding should be used to establish an overall policy that would also apply to GTE.

In its February 24, 1994 opinion and order after remand, the PSC majority opined that Ameritech's CFP proposal and other recent developments indicate changes in the telecommunications industry which make it necessary for the PSC to take steps toward implementing intraLATA dialing parity in order to insure fair and effective competition in the public interest:

> [T]he Commission is persuaded that Ameritech's Customers First Plan significantly alters the nature of competition and, therefore, signals the need for change. Although the Commission recognizes that this plan will undergo substantial changes, it is nevertheless probable, given the rapid developments in the telecommunications industry and a more flexible regulatory environment, that Ameritech will ultimately obtain relief from its interLATA restrictions. If not under the Customers First Plan, then Ameritech may obtain relief under some other form or plan. If Michigan Bell is in a position to offer interLATA toll service, but the IXCs cannot offer intraLATA dialing parity, the level playing field will cease to exist.
>
> * * *
>
> The Commission is also aware of more recent developments that may accelerate and intensify the debate about eliminating the interLATA restrictions. For example, on November 23, 1993, Congressman John D. Dingell introduced in the United States House of Representatives a bill that would give the Bell regional holding companies relief from some of the antitrust consent decree's line-of-business restrictions, thus allowing them into the interLATA toll market. Additionally, in a December 7, 1993 news release, Ameritech announced that it had requested the United States Department of Justice to approve waivers of the interLATA restriction so that it can offer long distance service under a trial of its Customers First Plan in Illinois, beginning in early 1995. That press release also indicates that other states could be added to the trial over time. It has also recently been reported in the media that MCI plans to build local fiber optic networks in the nation's 20 largest cities for the purpose of entering the local exchange market. These developments at the national level reflect a rapidly changing telecommunications environment.
>
> On the intrastate level, Act 179 envisions a telecommunications market place that minimizes or eliminates barriers to entry. (MCL 484.2103.) While this case deals only with entry into the intraLATA toll market, the Commission also envisions, and Act 179 permits, entry into the local exchange market, either driven by market forces or as proposed in Ameritech's Customers First Plan. Thus, the Commission is of the view that the standard for permitting entry into either the intraLATA toll market or the local exchange market may have to be consistently applied in both areas. For the Commission to refuse to permit intraLATA dialing parity, or to permit intraLATA dialing parity contingent upon action by another agency or court, could result in the Commission having to place similar restrictions on entry into the local exchange market. The Commission believes that such artificial constraints would stifle the competition that Act 179 envisions and permits. With this in mind, the Commission must continue to balance the competing interests in making the transition to a fully competitive intrastate

telecommunications market. As only one part of that transition, it is important that the Commission take the necessary steps to implement intraLATA dialing parity, so that the participants can continue to compete on a level playing field.

Accordingly, the Commission finds that intraLATA dialing parity is necessary for effective competition and, therefore, it is in the public interest.

The PSC majority went on to opine that while immediate implementation will not be required, implementation should not be delayed beyond January 1, 1996, even if federal policy-makers have not removed the current interLATA restrictions on Michigan Bell and GTE by that time:

> Further, the Commission finds that intraLATA dialing parity should be implemented when Michigan Bell and GTE are authorized and ready to provide interLATA toll service, but no later than January 1, 1996. The Commission is of the view that this decision strikes an appropriate balance between MCI's and AT&T's position that intraLATA dialing parity should be immediately implemented, and Michigan Bell's, GTE's, and MECA'S position that the Commission should continue to defer implementation to a later date. If, as appears likely, interLATA relief is obtained in the near future, the benefits of competition can also be introduced into several markets in the near future. However, if federal policy-makers continue to impose restrictions against participation in one market on the Bell and GTE operating companies, continuing to postpone competitive entry into all other markets can no longer be justified. Given the clear competitive mandates of Act 179 and increasing pressure for competitive entry into markets previously served only on a monopolistic basis, intraLATA dialing parity can no longer be delayed.[9]

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[9] The Customers First Plan applied only to Michigan Bell and the other regional Bell operating companies. If GTE is to provide interLATA toll service, it must take the necessary steps to obtain relief from that restriction.

Accordingly, the PSC ordered implementation of intraLATA dialing parity in Michigan "when Michigan Bell Telephone Company and GTE North Incorporated are authorized and able to provide interLATA toll service, but no later than January 1, 1996." The PSC also established a task force to work out the various issues involved in implementing the PSC's decision.

One commissioner dissented to the majority's imposition of a January 1, 1996 deadline for implementing intraLATA dialing parity, but concurred with the remainder of the majority's decision.

Michigan Bell and GTE petitioned for rehearing and reconsideration of the PSC's February 24, 1994 order, but their petitions were denied by the PSC in an opinion and order issued July 19, 1994. The PSC majority responded to the objections to its January 1, 1996 implementation deadline and its overall failure to make implementation conditional upon the granting of interLATA relief by explaining that changes in the telecommunications environment have prompted the PSC to loosen the connection between intraLATA dialing parity and interLATA relief, and that the public interest in effective competition renders continuation of the current dialing arrangements adverse to the public interest:

> The February 23, 1993 order deferred implementation of dialing parity and noted that Michigan Bell and GTE may be at a significant disadvantage because they are precluded from participating in the interLATA market, but the Commission did not

establish an 'ironclad link' between intraLATA dialing parity and interLATA relief. Rather, the Commission made a connection between intraLATA dialing parity and interLATA relief at that time for public policy reasons. However, the facts upon which those reasons were based have changed.

In the February 24, 1994 order, the Commission noted that Ameritech's Customers First Plan significantly alters the nature of competition and, consequently, signals the need for change. The Commission was persuaded that it is probable, given the rapid development of the telecommunications industry and a more flexible regulatory environment, that Ameritech will ultimately obtain relief from its interLATA restrictions either under the Customers First Plan or some other form or plan. As a result, the Commission noted that if Michigan Bell is in a position to offer interLATA toll service, but the IXCs cannot offer intraLATA dialing parity, the nature of competition will change significantly. Those considerations, as well as recent developments at the federal level, made it clear that the time has come for intraLATA dialing parity. As a matter of sound public policy, the Commission altered its finding regarding the implementation of intraLATA dialing parity to reflect major developments in the telecommunications environment.

Therefore, contrary to Michigan Bell's and GTE's contention, whether Ameritech obtains interLATA relief by January 1, 1996 was not the controlling factor in determining that intraLATA dialing parity should be implemented. The Commission specifically stated that if federal policy-makers continue to impose restrictions against participation in one market on the Bell and GTE operating companies, continuing to postpone competitive entry into all other markets can no longer be justified. Therefore, the Commission decided to establish a specific implementation date based on the policy of Act 179 favoring competition. In doing so, the Commission concluded that intraLATA dialing parity is necessary for effective competition and, consequently, it is in the public interest. Implicit in that finding is the conclusion that the current manner in which intraLATA toll service is provided does not promote effective competition and, therefore, it is adverse to the public interest to maintain the status quo.

The PSC majority also rejected arguments that requiring implementation of intraLATA dialing parity in Michigan prior to federal interLATA relief will have catastrophic economic consequences for GTE and Michigan Bell:

The Commission is not persuaded that implementation of intraLATA dialing parity will result in catastrophic consequences to Michigan Bell and GTE. Although the Commission recognized, in the February 23, 1993 order, that Michigan Bell and GTE may experience a significant loss in toll revenue if intraLATA dialing parity is implemented, the Commission does not believe that either company will lose 100% of its toll business, that the introduction of new services will come to a dead end, or that the state's telecommunications infrastructure will fall apart. The evidence demonstrated that those claims were based on worst case scenarios. In fact, GTE's witness, Jeffrey C. Kissell, acknowledged that it is unreasonable to assume that, in a competitive market, Michigan Bell and GTE will lose 100% of their WATS and 800 service if intraLATA dialing parity is implemented. (5 Tr. 923.) Furthermore, the Commission notes that Michigan Bell, in particular, has previously made exaggerated claims regarding the potential loss of business. The Staff's witness, William Celio, confirmed the fact that, for years, Michigan Bell has been predicting dire consequences if the Commission takes a particular action. However, the very opposite has occurred. Mr. Celio stated:

> [S]ince 1984 or thereabouts, we've been listening to Mr. Miller testify how the whole world will end, and Michigan Bell will exit from every meaningful market if the Commission does something. And [in] many cases, the Commission did that something, and . . . the only thing we've done with Michigan Bell is reduce rates and give refunds, because they were making excessive profits. So I have not seen a negative impact [from] Commission decisions. (6 Tr. 1360.)
>
> A more realistic view of what will happen is that Michigan Bell and GTE will have to compete for dial 1 intraLATA toll traffic, if they wish to remain in that market. The Commission agrees with the Staff that this competition will result in more new services, thereby contributing to the telecommunications infrastructure and the state's economy. Additionally, although the Commission established an implementation date, it did not order that intraLATA dialing parity be immediately implemented in all end offices within the state on January 1, 1996. One of the issues to be addressed by the task force is the development of a deployment schedule. Thus, not only are Michigan Bell's and GTE's fears exaggerated, they are also premature.

The PSC majority also rejected the argument that the necessary technology for intraLATA dialing parity cannot be deployed by January 1, 1996, adding that unless intraLATA dialing parity is required by a date certain, Michigan Bell and GTE "will simply not pursue that technology." Additionally, the PSC rejected arguments that it lacks authority to order implementation of intraLATA dialing parity or that Michigan Bell and GTE were deprived of adequate notice that the PSC might consider doing so following the proceedings on remand in this case. The dissenting commissioner again dissented to the January 1, 1996 deadline established by the majority.[2]

II

On appeal, appellants begin by arguing that the PSC lacks statutory authority to implement intraLATA dialing parity. We disagree. We note that the PSC is a creature of statute, without common-law powers, having only the authority conferred by clear and unmistakable language in specific statutory enactments. Union Carbide Corp v Public Service Comm, 431 Mich 135, 151; 428 NW2d 322 (1988); Midland Cogeneration Venture Limited Partnership v Public Service Comm, 199 Mich App 286, 295-296; 501 NW2d 573 (1993). We also note that § 201(2) of Act 179, MCL 484.2201(2); MSA 22.1469(201), itself provides that the PSC's authority in administering the act "shall be limited to the powers and duties prescribed by this act." However, we believe the PSC correctly relied upon § 205(2) of Act 179 as sufficiently specific express statutory authority for the PSC to implement intraLATA dialing parity.

Section 205(2) expressly authorizes the PSC to require changes in how telecommunication services are provided based upon a determination that the quality, general availability, or conditions for a regulated service are adverse to the public interest. Here, appellants do not deny that intraLATA toll service and the access necessary to provide such toll service are telecommunications services regulated under §§ 310-312 of the act. Although dialing patterns or arrangements are not specifically identified as part of the toll and access services regulated under §§ 310-312, there can be little dispute that dialing arrangements are at least "conditions for" such regulated services, if not actually part of the regulated services themselves, nor can it be denied that dialing arrangements affect how toll and access services are provided. Thus, upon the PSC's determination that the current dialing arrangements for intraLATA long distance service are adverse to the public interest, the language of § 205(2) is sufficient to authorize the PSC's to require changes in the dialing arrangements, including implementation of +1 dialing parity.

While it is true that § 205(2) does not specifically mention +1 intraLATA dialing parity or dialing arrangements in general, we find the statute's reference to "conditions for regulated service" sufficiently specific. We do not believe the Legislature was obliged to attempt to specifically enumerate all of the conditions for regulated services possibly covered by the statute. In this regard, we find Michigan Bell's reliance upon § 401(2) of the act misplaced. By providing that the PSC "shall not have the authority over a telecommunications service not specifically provided for in this act," § 401(2) prohibits the PSC from regulating certain kinds of telecommunication services not specifically provided for in the act. See In Re Procedure and Format for Filing Tariffs Under the Michigan Telecommunications Act, 210 Mich App 533, 536, 542; 534 NW2d 194 (1995). As we have already noted, intraLATA dialing parity may be viewed as a condition for regulated toll and access services specifically provided for in the act.

The mere fact that +1 intraLATA dialing parity is specifically mentioned in § 202(f)(x) does not necessarily imply that intraLATA dialing parity is not within the scope of the PSC's authority under § 205(2) as well. See, e.g., ABATE v Public Service Comm, 205 Mich App 383, 389; 522 NW2d 140 (1994) (statute specifically providing for PSC approval of energy conservation programs for residential ratepayers does not limit PSC's authority to approve utility's energy conservation program costs in rates). With regard to Act 179 in particular, this Court has already recognized that a statutory provision requiring the PSC to investigate the impact of a certain kind of regulatory action is not necessarily inconsistent with the PSC already having discretion to take such action by virtue of its regulatory authority granted elsewhere in the act. In re PSC Determination, No. 1, 204 Mich App 344; 346-348; 514 NW2d 535 (1994). Moreover, the fact that the House of Representatives initially adopted both the Power/Bandstra amendment mandating implementation of intraLATA dialing parity and the amendment adding the reporting requirement of § 202(f)(x) supports the conclusion that the latter provision is not intended to be a limitation on the PSC's authority to implement dialing parity. We agree with the PSC that the fact that the Power/ Bandstra amendment was ultimately deleted from the final version of the act simply indicates that the Legislature did not intend to require the PSC to implement intraLATA dialing parity, not that the Legislature intended to reserve to itself sole authority to determine whether intraLATA dialing parity should be implemented.

III

Appellants also argue that even if PSC's authority under § 205(2) includes the authority to implement intraLATA dialing parity, the PSC failed to follow the proper procedures for doing so in this case. Specifically, appellants object that the PSC never made a specific finding that the current intraLATA dialing arrangements are adverse to the public interest, but at most, merely found that implementing +1 dialing parity would be in the public interest. We reject this argument.

We find appellants' objection to be concerned more with the form than the substance of the PSC's decision. While it is arguably true that the PSC could find that one dialing arrangement is in the public's interest without necessarily concluding that another is adverse to the public interest, this is obviously not the substance of the finding made by the PSC in this case. As appellees note, the PSC not only found that implementation of +1 dialing parity is in the public interest, but also that it was "necessary" to serve the public's interest in the type of effective competition envisioned by Act 179. Moreover, the PSC specifically clarified in its July 19, 1994 opinion and order denying rehearing that the intended substance of its finding was that continuation of the current dialing arrangements, i.e., "the status quo," would in fact be adverse to the public interest. We do not believe that it is necessary to remand the case to the PSC for further findings of fact in this regard.

We also find no merit to GTE's objections that it was improper for the PSC to exercise its authority under § 205(2) in this case because the statute was not properly pled in MCI's complaint.

because MCI's complaint was ultimately dismissed or because a "quasi-judicial" complaint case is not the proper vehicle for the type of "quasi-legislature" inquiry into the public interest contemplated by § 205(2). We are satisfied from our review of MCI's complaint that the issue of whether the current intraLATA dialing arrangements were adverse to the public interest for purposes of § 205(2) was properly raised, particularly in ¶¶ 25 and 63 of the complaint, and while the PSC ultimately dismissed MCI's complaint, it specifically retained jurisdiction to address the § 205(2) issue. We find nothing improper with the PSC exercising its authority under § 205(2) in the context of a complaint case. Section 205(1) specifically refers to the PSC's authority to "investigate and resolve complaints." Moreover, it is not impermissible for the PSC to establish broad rules and policies in the context of a contested case proceeding. See Midland Cogeneration, supra at 310.

IV

We reject Michigan Bell's argument that the "adverse to the public interest" criterion of § 205(2), as interpreted by the PSC, is so vague and standardless as to constitute an unconstitutional delegation of legislative power, or that the criterion has been arbitrarily applied by the PSC in this case. Ordinarily, a four-factor test is used to determine whether adequate standards have been adopted for the delegation of statutory power. First, the act in question must be read as a whole, and the provision in question must be construed with reference to the entire act. Next, the standard should be as reasonably precise as the subject matter requires or permits. Third, if possible, the statute must be construed as being valid, conferring administrative, not legislative, and discretionary, not arbitrary, authority. Last, the statute must satisfy due process requirements. E.g., Attorney General v Public Service Comm, 161 Mich App 506, 510; 411 NW2d 469 (1987), lv den 429 Mich 879 (1987).

Here, the PSC's interpretation of the "public interest" standard of § 205(2) seems consistent with a reasonable interpretation of Act 179 as a whole, inasmuch as the PSC construed the "public interest" standard according to the overall goal of Act 179 to promote effective competition in telecommunication services. In this regard, the PSC has properly read the statute in context with the remainder of the act to give content to the "public interest" standard. In finding that implementation of intraLATA dialing parity is in the public's interest, the PSC did not apply a wholly arbitrary notion of the "public interest," but relied upon its determination of what action would best serve the public's interest in a competitive telecommunications market. While appellants may disagree with the PSC's determination that implementing intraLATA dialing parity helps to foster a competitive marketplace, the fact that appellants are able to marshal facts and arguments to support their position in this regard serves to indicate that the public's interest in competition is something which can be objectively determined, rather than a wholly amorphous and standardless concept.

Turning to the second factor of the test, appellees correctly note that broad statutory standards based upon public interest, convenience, or necessity are frequently used in the area of public utilities regulation. This is due to the wide range of discretion ordinarily accorded to administrative regulators in the public utilities context. See, e.g., In re Provider Class Plan, 203 Mich App 707, 729; 514 NW2d 471 (1994). In this regard, requirements of "just and reasonable" rates, or conditions in the "public interest" are as reasonably precise as the subject matter permits. See Attorney General, supra at 510-511. Where, as here, such standards are applied in accordance with the requirements and purposes of the legislation in which they appear, such standards are not unconstitutional because of vagueness or delegation of legislative power. Id; National Broadcasting Company v United States, 319 US 190; 67 S Ct 997; 87 L Ed 1344 (1943).

Regarding the third factor of the test, the PSC appears to have properly construed the "public interest" standard as permitting only the exercise of its discretionary power to administer the act in accordance with its overall requirements and purposes, rather than a wholesale grant of legislative or

arbitrary power. We find it unnecessary to add a limiting construction exempting +1 dialing arrangements from the scope of the statute as Michigan Bell suggests. Indeed, creating such an exception would appear to do little in the way of adding clarity or specificity to the "public interest" standard.

As for the fourth and final factor of the test, the requirements of due process appear to be fully satisfied here where all interested parties were afforded ample opportunity to litigate the issues in a contested case hearing held in accordance with the requirements of § 205. Attorney General, supra.

We are unpersuaded by Michigan Bell's argument that the PSC's May 21, 1993 remand order and subsequent notice of hearing affirmatively misled Michigan Bell into believing that the PSC would be considering only implementation of intraLATA dialing parity "if and when" the interLATA relief requested by Michigan Bell's parent company is granted by federal authorities.

As noted by the PSC in its July 19, 1994 order denying rehearing, the PSC did plainly indicate in its May 21, 1993 remand order and subsequent notice of hearing that the purpose of allowing further development of the record was to allow the PSC to "reevaluate" its previous determinations. While the PSC refused to reinstate MCI's complaint, it plainly indicated that its previous determination that implementation of intraLATA dialing parity pursuant to § 205(2) of the act should be deferred until a later time, due in part to the interLATA restrictions imposed upon Michigan Bell and GTE by federal authorities, was one of the matters which the PSC would ultimately "reevaluate" after further development of the record. In this regard, the PSC's reference to implementation of intraLATA dialing parity "if and when" federal interLATA relief is granted appears to be more of an indication of the issues to be reevaluated rather than a self-imposed restriction on the PSC's authority to fully reconsider the matter. We find this to be especially clear when one considers the fact that the PSC indicated in both its May 21, 1993 remand order and subsequent notice of hearing that it may establish an overall policy affecting both GTE and Michigan Bell, despite the fact that only Michigan Bell was to receive interLATA relief pursuant to the Ameritech proposal to be considered on remand:

> An analysis of this information is appropriate so that the Commission may reevaluate its determinations based on a full and complete record. Finally, although GTE will not be affected by Ameritech's petition, the Commission agrees with the Staff that this proceeding should be used to establish an overall policy that would also apply to GTE.

Obviously, if the PSC was considering establishing a policy for implementing intraLATA dialing parity which would be applicable to GTE regardless of whether GTE had actually obtained interLATA relief, the PSC was not considering only implementing intraLATA dialing parity in conjunction with federal interLATA relief. Moreover, the fact that Michigan Bell repeatedly argued throughout the proceedings after remand decision that implementation of intraLATA dialing parity should be tied to and conditional upon interLATA relief seems to us to suggest that Michigan Bell was aware that the issue of unconditional implementation of intraLATA dialing parity was not wholly beyond the PSC's consideration at that point.

V

Finally, we do not believe that appellants have met their burden of establishing by clear and satisfactory evidence that the PSC's decision is an arbitrary, capricious, abuse of discretion or unsupported by the requisite competent, material and substantial evidence on the whole record. Michigan Intra-State Motor Tariff Bureau v Public Service Comm, 200 Mich App 381, 387-388; 504 NW2d 677 (1993).

We are satisfied from our review of the record that the requisite evidentiary support exists for the PSC's decision in this case. Appellants do not address the evidentiary record in much detail but instead largely rely upon the theory that since the PSC initially declined to implement intraLATA dialing parity in 1993, substantial evidence presented at the initial phase of the case supported deferral of intraLATA dialing parity, and to the extent that the evidence presented on remand did not substantially contradict the evidence presented in the initial phase supporting deferral, there was not substantial evidence to support any change in the PSC's initial decision in support of deferral.

We find appellants' theory unsupported by the true nature of the PSC's decisions in this case. In its initial opinion and order issued February 23, 1993, the PSC did not really reach and decide the issue of whether implementing intraLATA dialing parity, either with or without corresponding federal interLATA relief, would be in the public's interest or adverse to it for purposes of § 205(2). Rather, the PSC merely deferred consideration of that issue until a later time, due to the complexity of the issues involved. While the PSC did reject MCI's arguments that the lack of intraLATA dialing parity was a deprivation of equal access and therefore violative of § 305 and § 312(4) of Act 179, it specifically declined to determine whether implementation of intraLATA dialing parity, either with or without corresponding interLATA relief, should be granted on the basis of the PSC's discretionary authority under § 205(2) of the act. It is true that the PSC noted the existing federal interLATA restrictions upon Michigan Bell and GTE in its initial decision to defer deciding the § 205(2) issue, this is not the same thing as an affirmative determination that deferring implementation of intraLATA dialing parity until federal interLATA relief is granted is in the public's interest or that changing the current dialing arrangements without corresponding federal interLATA relief would be adverse to the public's interest.

Appellants overlook the fact that it was adjudication of the § 205(2) issues, not the implementation of intraLATA parity itself, which the PSC indicated that it was deferring in its February 23, 1993 decision. However, deferral of the § 205(2) issues necessarily had the practical effect of deferring any implementation of intraLATA dialing parity as well. In this regard, the only "reversal" of the PSC's initial deferral decision was in its May 1993 order reopening the record to undertake further consideration of the implementation issue on the basis of the record developed in the instant case, as opposed to some other, future proceeding. When the PSC later decided, in its February 24, 1994 opinion and order, that implementation of intraLATA dialing parity should not be further delayed, even if federal interLATA relief is not granted in the near future, because continuation of the status quo would be adverse to the public interest, the PSC was simply reaching the issue which it had previously deferred, not reversing any prior determination of the issue.

Obviously, the PSC was well aware that federal interLATA relief might not be granted by the January 1, 1996 deadline, and that Michigan Bell and GTE were still likely to be significantly disadvantaged if intraLATA dialing parity is implemented without corresponding federal interLATA relief. The PSC never really previously determined that this was sufficient justification to defer implementation of intraLATA dialing parity indefinitely, but only that this justified "further consideration" of the issue. Thus, it makes little sense for GTE to complain that there is no evidence in the record establishing that it will be granted federal interLATA relief by January 1, 1996 or that it will not be significantly disadvantaged in its ability to compete with interexchange carriers in the intraLATA long distance market in the absence of such interLATA relief. The PSC did not really make any findings to the contrary. Rather, the PSC majority essentially concluded that the potential disadvantages to Michigan Bell and GTE in the absence of corresponding federal interLATA relief are, under the circumstances, insufficient justification for further delaying implementation of intraLATA dialing parity in Michigan.

We do not find the PSC's decision to be arbitrary, capricious, or an abuse of discretion. Essentially, the PSC was required to make a judgment call based upon the various pros and cons of

requiring implementation of intraLATA dialing parity by a date certain, regardless of whether federal interLATA relief is granted, or instead deferring implementation indefinitely to await further action by federal policy-makers concerning the issue of interLATA relief. In its February 24 and July 19, 1994 opinions, the PSC majority identified cogent reasons for preferring the former situation to the latter. For example, the PSC reasoned that adopting a policy of maintaining the status quo until further action is taken by some federal agency or court would create an "artificial constraint" upon intraLATA toll competition, even as the various telecommunications markets and the parties respective positions in them continue to rapidly change, inhibiting the PSC's ability to respond to those changes. Michigan Bell and GTE do not really dispute the fact that their exclusive use of +1 dialing arrangements gives them a competitive edge over interexchange carriers such as MCI in the intraLATA toll market, thereby impairing effective competition to that extent, but simply argue that the advantage is justified to offset the advantages that the interexchange carriers have by virtue of their ability to service the interLATA toll market. Nor does it appear to be disputed that the various telecommunication markets, and the participants in them, are rapidly changing. Evidence was presented that MCI and others will soon begin to compete in the local exchange market, for example.

On the other hand, the PSC majority found that the impact of implementing intraLATA dialing parity without corresponding federal interLATA relief, while substantial, would not be as devastating as appellants had claimed. The PSC noted changes in the availability and feasibility of two-PIC technology which would allow GTE and Michigan Bell to avoid much of the technological "insuperable disadvantage" noted by the federal district court in the Bell divestiture case in the event that customers are required to choose the same intraLATA and interLATA toll carrier.

This Court will not displace the PSC's choice between two reasonable competing alternatives, and will accord a special deference to the PSC's determination where, as here, experimental legislation is involved. In re Quality of Service Standards for Regulated Telecommunications Services, 204 Mich App 607, 612; 516 NW2d 142 (1994). The fact that the utility commissions of several other states have implemented +1 intraLATA dialing parity despite the lack of corresponding interLATA relief, while many other states still have not, seems to establish at least that there is room for reasonable minds to differ on this issue. Thus, while there may be reasonable grounds for disagreement with the PSC's decision, we are not persuaded that the PSC's decision is arbitrary, capricious, or an abuse of discretion.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Harold Hood
/s/ Daphne M. Curtis

[1] We acknowledge that Michigan Bell declines to use the term "intraLATA dialing parity," preferring instead the term "intraLATA presubscription," apparently on the theory that "dialing parity" misstates the inequality of competitive positions which may result if the uniform intraLATA dialing arrangements are implemented before LECs are allowed to provide interLATA toll services. However, we consider the concepts of "dialing parity" and "presubscription" virtually synonymous and will therefore use those terms interchangeably.

[2] Appellees have brought a number of subsequent events to our attention in supplemental briefing after oral argument but we are unpersuaded that there has been any waiver, forfeiture or abandonment of the appellants' positions in these appeals.

Court of Appeals, State of Michigan

ORDER

Joel P. Hoekstra
Presiding Judge

GTE North, Inc. v MPSC; Michigan Bell v MPSC

Docket # 177802 & 177886

L.C. # U-10138

Harold Hood
Daphne Means Curtis
Judges

The Court orders that the motion to dismiss is DENIED.

Presiding Judge

Judge Curtis did not participate .

STATE OF MICHIGAN COURT OF APPEALS

A true copy entered and certified by Ella Williams, Chief Clerk, on

JAN 12 1996
Date

Ella Williams
Chief Clerk

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ORDER

Ameritech Michigan v MPSC

Docket # 184718

L.C. # 00010138

Robert P. Young, Jr.
Presiding Judge

Jane E. Markey

Donald A. Teeple

Judges

The Court orders that the motion to dismiss pursuant to MCR 7.211(C)(2) is DENIED.

STATE OF MICHIGAN COURT OF APPEALS

A true copy entered and certified by Ella Williams, Chief Clerk, on

10/7/96
Date

Ella Williams
Chief Clerk

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ORDER

Ameritech Michigan v MPSC

Docket # 184718 and 186602

L.C. # 00010138 and 00010138

Robert P. Young, Jr.
Presiding Judge

Jane E. Markey

Donald A. Teeple

Judges

The Court orders that the motion to file a supplemental brief is GRANTED.

STATE OF MICHIGAN COURT OF APPEALS

A true copy entered and certified by Ella Williams, Chief Clerk, on

10/7/96
Date

Ella Williams
Chief Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AMERITECH MICHIGAN, INC.,
a Michigan Corporation,

Plaintiff,

v.

JOHN G. STRAND, DAVID A. SVANDA
and JOHN C. SHEA,

Defendants.
/

Case No. 5:96-CV-166

HON. ROBERT HOLMES BELL

ORDER OF ABSTENTION

In accordance with the opinion entered this date;

IT IS HEREBY ORDERED that this Court shall abstain from this matter;

IT IS FURTHER ORDERED that Plaintiff Ameritech Michigan, Inc.'s Motion for Preliminary Injunction against enforcement of the June 26, 1996, Order of the Michigan Public Service Commission is DENIED as moot.

Dated: November 4, 1996

ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE

APPENDIX 18

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AMERITECH MICHIGAN, INC.,
a Michigan Corporation,

Plaintiff,

v.

JOHN G. STRAND, DAVID A. SVANDA
and JOHN C. SHEA,

Defendants.
/

Case No. 5:96-CV-166

HON. ROBERT HOLMES BELL

OPINION

Before the court is a motion by Ameritech Michigan (Ameritech) seeking a preliminary injunction against enforcement of the June 26, 1996, Order of the Michigan Public Service Commission (Commission). The defendants are individual members of the Commission. The June 26 Order reinstated four previous Commission Orders which required Ameritech to implement intraLATA dialing parity and set out an implementation schedule.[1] Ameritech claims it is entitled to a preliminary injunction against the enforcement of the Commission's June 26 Order on the basis that (1) the Commission's Order was preempted by the Federal Telecommunications Act and (2) Ameritech has a constitutionally protected liberty interest in having §312 of the Michigan Telecommunications Act (MTA) interpreted in its favor.

[1] The Commission's Orders of February 24, 1994 and July 19, 1994 required the implementation of dialing parity, while the Commission's Orders of March 10, 1995 and June 5, 1995 included provisions for implementation of dialing parity.

On July 9, 1996, Ameritech filed a motion for stay, motion for rehearing, and a motion for reopening of the record with the Commission. On October 7, 1996, the Commission issued an Order denying all three of Ameritech's motions. On October 11, 1996, Ameritech filed a motion for temporary restraining order, order to show cause and preliminary injunction with this Court. On the same day, this Court denied Ameritech's motion for a temporary restraining order. This Court also set a preliminary injunction hearing for October 18, 1996. At the October 18 hearing, the Court denied AT&T and MCI's motions to intervene but granted them amicus curiae status with the ability to file briefs and provide oral arguments at the discretion of the Court.

Background

Before setting out the particular facts of this case, it is necessary to explain the historical context in which it arises. In January 1982, AT&T and the Bell Operating Companies (BOCs), including Michigan Bell, entered a settlement agreement, a "Modified Final Judgment" (MFJ), in an anti-trust action brought by the United States against AT&T and the BOCs. The settlement was approved by the federal court in *United States v. American Telephone and Telegraph Co.*, 552 F.Supp. 131 (D.D.C. 1982) *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983). Since the settlement, Michigan Bell has begun doing business under the name of Ameritech Michigan. The settlement included the establishment of LATAs, local access and transport areas which are similar in size and location to area codes. Under the

settlement, the BOCs, including Michigan Bell, were prohibited from providing interLATA long distance services, long distance services between LATAs. Examples of companies which provide interLATA toll services, sometimes called inter-exchange carriers, include AT&T and MCI.

IntraLATA toll services are long distance services within a LATA. Ameritech has had a moncpoly on a significant part of intraLATA toll services in Michigan. When a customer of one of the interLATA service providers makes a long distance call within a LATA, Ameritech handles the call unless the customer dials several extra digits or an access code. IntraLATA dialing parity refers to the ability of customers of telecommunication companies other than the "dial-1" toll provider, i.e., Ameritech, to make a toll call without having to dial an access code or extra digits.

The Federal Telecommunications Act

Ameritech claims that the Federal Telecommunications Act preempts the June 26, 1996, Commission Order requiring Ameritech to implement intraLATA dialing parity. The Federal Telecommunications Act contains provisions concerning the Bell operating companies. Section 271(e) states:

> (2) IntraLATA toll dialing parity
>
> (A) Provision required. A Bell operating company granted authority to provide interLATA services under subsection (d) of this section shall provide intraLATA toll dialing parity throughout that State coincident with its exercise of authority.
>
> (B) Limitation. Except for single-LATA States and States that have issued an order by December 19, 1995, requiring a Bell operating company to implement intraLATA toll dialing parity, a State may not require

> a Bell operating company to implement intraLATA toll dialing parity in that State before a Bell operating company has been granted authority under this section to provide interLATA services originating in that State or before 3 years after February 8, 1996, whichever is earlier....

47 U.S.C. § 271(c)(2)(A) & (B).

The exception in the statute was a result of the Breaux-Leahy amendment, which was explained by Senator Leahy:

> Without this amendment, S. 652 would have prohibited all States from ordering a Bell operating company to provide dialing parity for in-State toll calls before the company is authorized to provide long-distance service in that area...
>
> In addition, as introduced, the bill rolled back the actions of 10 States that have already ordered local telephone companies to provide dialing parity for in-State toll calls.
>
> The 10 States that would have had to undo their dialing parity requirements are: Illinois, Wyoming, Wisconsin, Michigan, Florida, Connecticut, Georgia, Kentucky, Minnesota, and New York.
>
> These States recognize that dialing parity is a key to healthy competition for in-State toll calls.
>
> They should not be second-guessed and preempted on the Federal level....

S8349 Congressional Record, Senate June 14, 1995.

Michigan Telecommunications Act

Ameritech claims that the 1995 amendments to Michigan Telecommunications Act, MCL 484.2201 et seq., superseded the four previous Orders of the Commission, which required intraLATA dialing parity. Ameritech further claims that because the Orders were superseded, the Federal Telecommunications Act preempts the June 26, 1996 Commission Order.

On a number of occasions, The Commission has addressed the issue of intraLATA dialing parity in Michigan. On December 21, 1989, the Commission found that "the '10xxx' dialing arrangement provided the IXCs [inter-exchange carriers] with 'equal access' to GTE's and Michigan Bell's local exchange network as required by federal authorities." *GTE North v. Public Service Commission*, 218 Mich. App. 137, 141 (1996). On July 31, 1992, MCI filed a complaint with the Commission, in which they sought an order directing Ameritech and GTE to implement intraLATA dialing parity. On February 23, 1993, the Commission dismissed MCI's complaint and deferred consideration of whether the Commission should implement dialing parity until some future time. *Id.* at 144. On May 21, 1993, the Commission reopened the issue of intraLATA dialing parity. *Id.* at 145. After a number of hearings over this issue and input from Michigan Bell, GTE, MCI, AT&T, Litel, the Michigan Exchange Carriers Association, and Attorney General Frank Kelley, on February 24, 1994, the Commission issued an opinion and order which stated:

> "[T]he Commission finds that intraLATA dialing parity is necessary for effective competition and, therefore, it is in the public interest. Further, the Commission finds that intraLATA dialing parity should be implemented when Michigan Bell and GTE are authorized and ready to provide interLATA toll service, but no later than January 1, 1996.... [I]f federal policy makers continue to impose restrictions against participation in one market on the Bell and GTE operating companies, continuing to postpone competitive entry into all other markets can no longer be justified. Given the clear competitive mandates of Act 179 and increasing pressure for competitive entry into markets previously served only on a monopolistic basis, intraLATA dialing parity can no longer be delayed."

February 24, 1994 Opinion at 42, 43. The opinion further stated, "a task force should be established to work out the procedure for the IXCs [inter-exchange carriers] to be in position to fully and fairly compete in the intraLATA toll market." A July 19, 1994 Commission Order denied GTE and Michigan Bell's motion for rehearing and reconsideration of the February 24, 1994 Order.

GTE North and Michigan Bell appealed the February 24, 1994 and July 19, 1994 Orders of the Commission. In *GTE North v. Public Service Commission*, 215 Mich. App. 137 (1996), the Court of Appeals upheld the Commission's Orders. The Court ruled that the Commission had the statutory authority to implement intraLATA dialing parity. *Id.* at 153, 154. The Court also ruled that the Commission had followed proper procedures in the case. *Id.* at 156, 157. With respect to Ameritech's challenge to the merits of the Commission decision, the court stated "the PSC was required to make a judgment call based upon the various pros and cons of requiring implementation of intraLATA dialing parity by date certain, regardless of whether federal interLATA relief is granted, or instead deferring implementation indefinitely to await further action by federal policy makers concerning the issue of interLATA relief. In its February 24 and July 19, 1994, opinions, the PSC majority identified cogent reasons for preferring the former situation to the latter." *Id.* at 164. This decision was not appealed by GTE or Michigan Bell.

On March 10, 1995, the Commission issued another Opinion and Order in response to the Report of the Dialing Parity Task Force, which was submitted to the Commission on September 23, 1994. The Commission stated that intraLATA dialing parity should be implemented on a "flash-cut" basis, all offices in unison rather than as soon as conversion was possible at an individual office, by January 1, 1996. March 10, 1995 Opinion at 14-15. The Commission also denied Ameritech's request to delay intraLATA parity until January 1, 1997. *Id.* at 16,17. With regard to offices that do not convert according to the stated schedule, the Commission found that there should be a 55% discount on access charges in those offices *Id.* at 20. The Commission further stated that Ameritech mischaracterized these discounts as penalties. *Id* at 21. The Commission explained that "the discount reflects the fact that there are different levels of service that warrant different pricing. Here, the access that will be provided in offices that do not convert to intraLATA dialing parity as scheduled requires the dialing of access codes, which is different from dialing a single digit." *Id.* The June 5, 1995 Commission Order denied Ameritech's motion for rehearing and reconsideration of the March 10, 1995 Order. These two Commission Orders are currently being appealed to the Michigan Court of Appeals by GTE and Ameritech, docket numbers 186602 and 184718 respectively. Oral argument was heard before the Court of Appeals on October 9, 1996.

On November 30, 1995, Governor John Engler signed 1995 PA 216, which amended the Michigan Telecommunications Act and included section 312b, a new section concerning intraLATA dialing parity. Ameritech claims that this statute caused the Commission's February 24, 1994, July 19, 1994, March 10, 1995, and June 26, 1995 Orders to be superseded. The relevant parts of section 312b state:

> 484.2312b. Providing + intra-LATA toll dialing parity; specific dates (1) Except as otherwise provided in subsection (2) or (3), a provider of basic local exchange service shall provide 1 + intra-LATA toll dialing parity and shall provide inter-LATA toll service to an equal percentage of customers within the same service exchange on the following dates:
>
> (a) To 10% of the customers by January 1, 1996.
> (b) To 20% of the customers by February 1, 1996.
> (c) To 30% of the customers by March 1, 1996.
> (d) To 40% of the customers by April 1, 1996.
> (e) To 50% of the customers by May 1, 1996.
>
> (2) If the inter-LATA prohibitions are removed, the commission shall immediately order the providers of basic local exchange service to provide 1 + intra-LATA toll dialing parity.
>
> (3) Except for subsection (1)(a), subsection (1) does not apply to the extent that a provider is prohibited by law from providing either 1 + intra-LATA toll dialing parity or inter-LATA toll services as provided under subsection (1).
>
> (4) Except as otherwise provided by this section, this section does not alter or void any orders of the commission regarding 1 + intra-LATA toll dialing parity issued on or before June 1, 1995.
>
> (5) The commission shall immediately take the necessary actions to receive the federal waivers needed to implement this section.

Before §312 was passed, a proposed Senate bill contained the following language:

> Until the inter-LATA prohibitions are removed for providers of basic local exchange service, a provider of basic local exchange service is not required to provide 1 + intra LATA toll dialing parity. If the inter-LATA prohibitions are removed, then a provider of basic local exchange service shall offer to other providers 1 + intra-LATA toll dialing parity.

This language was subsequently withdrawn and §312b was adopted instead. Both sides in their briefs before this Court and in their briefs before the Commission prior to its June 26, 1996 Order introduced extensive legislative history in support of their interpretation of the purpose and effect of the Michigan Telecommunications Act.

On February 8, 1996, Congress passed the Federal Telecommunications Act of 1996. The Act, quoted above dealt with the issue of intraLATA dialing parity. It is Ameritech's contention that because of §312b of the Michigan Telecommunications Act, Michigan does not fit into the stated exception of the Federal Telecommunications Act.

On May 2, 1996 MCI and AT&T filed a joint motion to compel Ameritech to comply with the Commission's prior orders which had required intraLATA dialing parity. Ameritech filed a response brief on May 9, 1996, and oral argument was heard by the Commission on May 23, 1996. On June 26, 1996, the Commission issued an Order granting the motion to compel.

The Order explained the positions of the parties. MCI and AT&T claimed that the schedule contained in MTA §312b was intended as a phase-in period for intraLATA dialing parity and that the schedule did not refer to intraLATA dialing parity after

May 1, 1996. They claimed that the Commission's previous orders are fully effective after May 1, 1996. AT&T and MCI focused on §312b (4) for the proposition that the MTA was not intended to supersede the previous orders.

Ameritech claimed that the schedule only required it to provide intraLATA dialing parity for 10% of its customers until it received interLATA relief. Ameritech also claimed that because §312b will be repealed in its entirety on July 1, 1997, see MCL §484.2604, it makes little sense to say that the schedule was only intended to extend to May 1, 1996.

The Commission found that §312b on its face is not clear because it is silent as to intraLATA dialing parity after May 1, 1996. The Commission stated that based on the specific words of the act, the Legislature did not create linkage between intraLATA parity and interLATA relief. They pointed out that the statute did not say that "intraLATA dialing parity doesn't have to go forward , except for the first ten percent, unless and until the [federal] interLATA prohibition has been lifted." June 26, 1996 Order at 8. They also pointed out that "the phrase 'no more than' could have been inserted before each of the numerical percentages found in subsections (1)(a) through (1)(e) of Section 312b." *Id.* With respect to the language of Section 604(2), the Commission stated that "[b]ecause the Commission has already ruled that Ameritech Michigan should implement intraLATA dialing parity ... , the future repeal of Section 312b simply removes any doubt that 100% implementation is consistent with the

Legislature's intent." *Id.* at 9. The Commission agreed with AT&T and MCI's interpretation that the statute only provided Ameritech an opportunity to ramp-up its intraLATA dialing parity coverage. They also agreed with AT&T and MCI's interpretation that §312b(4) of the MTA did not void the Commission's previous orders.

The Commission found that the legislative history of §312b contradicted Ameritech's interpretation of the statute. The Commission focused on the withdrawn Senate Bill which would have inextricably linked intraLATA parity with interLATA relief. The Commission also stated:

> As originally written, Section 312b(4) retained the effectiveness of all Commission orders regarding dialing parity issued before June 30, 1995. However, that date was in conflict with the June 1, 1995 cut-off being considered by Congress in legislation that eventually became the Telecommunications Act of 1996. This created the possibility that the Commission's orders concerning dialing parity might not be considered 'grandfathered' and that Michigan, like a majority of the states, would be precluded for up to three years from requiring Ameritech Michigan to implement dialing parity unless the company first received authority to provide interLATA toll service.
>
> To avoid that result, the language of Section 312b(4) was amended by replacing 'June 30, 1995' with 'June 1, 1995.' In making that change, the Legislature ensured (1) that the removal of interLATA prohibitions would not become a condition precedent to requiring Ameritech Michigan to provide intraLATA dialing parity, and (2) that prior Commission orders requiring the comprehensive implementation of dialing parity would not be overturned by the new federal law.

Id. at 12-13.

The Commission concluded that "Ameritech Michigan's interpretation of Section 312b should be rejected and the construction proposed by MCI and AT&T ... should be adopted